

**UNOFFICIAL VERSION OF NONDEGRADATION RULE 17.30.716**

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NON-SIGNIFICANT CHANGES IN WATER QUALITY (1) In addition to the activities listed in 75-5-317, MCA, the categories or classes of activities that are identified in this rule have been determined by the department to cause changes in water quality that are nonsignificant due to their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301, MCA.

(2) Except as provided in (5), a subsurface wastewater treatment system (SWTS) that meets all of the criteria in (2)(a) and falls within one of the categories in (2)(b) is nonsignificant.

(a) The SWTS, including primary and replacement drainfields must meet all of the following criteria:

(i) the drainfield must be 1,000 feet or more (400 feet or more for lots that meet the criteria in (2)(b)(iv)) from the nearest downgradient high quality state surface water that might be impacted. This distance may be reduced by 50 percent (to 500 and 200 feet, respectively) if the drainfield is pressure-dosed;

(ii) if the drainfield is not pressure-dosed:

(A) the soil percolation rate must be between 16 and 50 minutes per inch, if a percolation test has been conducted for the drainfield; and

(B) the natural soil beneath the absorption trench must contain at least six feet of very fine sand, sandy clay loam, clay loam, or silty clay loam;

(iii) the SWTS must serve no more than two single-family residences, or must serve a facility that produces non-residential, non-industrial wastewater with a wastewater design flow of 700 gallons per day or less;

(iv) there must be only one SWTS receiving wastewater from the lot;

(v) the SWTS must be located on the lot where wastewater is produced;

(vi) the SWTS must meet the current design standards defined in ARM Title 17, chapter 36, sub-chapter 3 and department Circular DEQ-4; and

(vii) for lots smaller than 20 acres, and for lots 20 acres and larger on which the drainfield is 500 feet or less from the downgradient property boundary, the background nitrate (as N) concentration in the shallowest ground water must be less than two mg/L.

(A) The department may require multiple ground water samples over a specified time period to determine whether seasonal variation of ground water nitrate concentrations may affect compliance with this requirement.

(b) The SWTS must fall within one of the following five categories:

(i) for category one:

(A) the lot size is two acres or larger;

(B) the percolation rate is 16 minutes per inch or slower, if a percolation test has been conducted for the drainfield;

(C) the natural soil beneath the absorption trench contains at least six feet of very fine sand, sandy clay loam or finer soil; and

(D) the depth to bedrock and seasonally high ground water is eight feet or greater;

(ii) for category two:

(A) the drainfield is pressure-dosed;

(B) the lot size is two acres or larger;

(C) the percolation rate is six minutes per inch or slower, if a percolation test has been conducted for the drainfield;

(D) the natural soil beneath the absorption trench contains at least six feet of medium sand, sandy loam or finer soil; and

(E) the depth to bedrock and seasonally high groundwater is 12 feet or greater;

(iii) for category three:

(A) the drainfield is pressure-dosed;

(B) the lot size is one acre or larger;

(C) the subdivision consists of five lots or fewer;

(D) there is no existing or approved SWTS within 500 feet of the subdivision boundaries;

(E) the percolation rate is six minutes per inch or slower, if a percolation test has been conducted for the drainfield;

(F) the natural soil beneath the absorption trench contains at least six feet of medium sand, sandy loam or finer soil; and

(G) the depth to bedrock and groundwater is 100 feet or greater;

(iv) for category four:

(A) the total number of subdivision lots that were reviewed pursuant to 76-4-101 et seq., MCA and were created in a county during the previous 10 state fiscal years is fewer than 150; and

(B) the lot is not within one mile of the city limits of an incorporated city or town with a population greater than 500 as determined by the most recent census; or

(v) for category five:

(A) the SWTS is a level II system;

(B) the lot size is two acres or larger;

(C) the bottom of the drainfield absorption trenches is not more than 18 inches below ground surface; and

(D) the depth to limiting layer (based on test pit data) is greater than six feet below ground surface;

(3) A mixing zone is not required for SWTSs that meet the criteria in this rule. However, SWTS drainfields must be located so that there is a 100-foot setback between existing and approved water supply wells and the boundaries of a 100-foot mixing zone that is provisionally designated for purposes of applying this setback.

(4) The Department may require that on-site information be provided to verify any of the criteria required in this rule.

(5) Notwithstanding an activity's designation as nonsignificant in this rule, the department may review the activity for significance under the criteria in ARM 17.30.715(1) based upon the following:

- (a) cumulative impacts or synergistic effects;
- (b) secondary byproducts of decomposition or chemical transformation;

- (c) substantive information derived from public input;

- (d) changes in flow;

- (e) changes in the loading of parameters;

- (f) new information regarding the effects of a parameter;

or

- (g) any other information deemed relevant by the department and that relates to the criteria in ARM 17.30.715(1).

(6) The department may determine that the categorical exclusion in (2) does not apply to lots within a specific geographic area. This determination must be based upon information submitted in a petition demonstrating that the categorical exclusions should not apply within that area.

- (a) A petition submitted under this rule may be considered only if it is submitted by a local governing body, a local department or board of health, a local water quality district, or by either 10% or 20, whichever is fewer, of the landowners (or persons with a contract interest in land) within the affected geographic area.

- (b) A petition submitted under this rule must contain the following information:

- (i) a legal description of the petition area, which is the geographic area within which the categorical exclusions would not apply;

- (ii) a detailed description of the soils, geology, and hydrogeology of the area described in (6)(b)(i);

- (iii) a current listing from a title insurance company of the names and addresses of all persons who either own or have a contract interest in land within the petition area; and

- (iv) data from ground water samples taken from wells that withdraw water from the uppermost aquifer underlying the petition area or from wells that withdraw water from the uppermost aquifer underlying an area within the same or adjacent county with similar climatic, soil, geologic, and hydrogeologic conditions and a density of individual sewage systems similar to that allowed in (2)(b). The ground water data must demonstrate that one of the following conditions is met:

- (A) nitrate as nitrogen concentrations exceed 5.0 mg/L in ground water samples from more than 25% of at least 30 wells that are not located within a standard mixing zone, as defined in ARM 17.30.517(1)(d)(viii), for a septic system; or

- (B) data from ground water samples collected at least three years apart from the same 15 wells indicate a statistically significant increase of greater than 1.0 mg/L in nitrate as nitrogen concentrations in the uppermost aquifer.

(c) Within 90 days after receipt of the information required in (6)(b), the department shall issue a preliminary decision as to whether the petitioner has satisfied the requirements in (6)(b), and describe the reasons for either granting or denying the petition. The preliminary decision must be mailed to the petitioner and to all landowners or persons with a contract interest in land within the petition area and must include the following information:

- (i) a description of the petition area;
- (ii) a summary of the basis for the preliminary decision including any modifications to the boundaries of the petition area;
- (iii) a description of the procedures for public participation and of the opportunity to comment prior to the department's final decision on the petition;
- (iv) the ending dates of the comment period and the address where comments will be received;
- (v) procedures for requesting a hearing; and
- (vi) the name and telephone number of a person to contact for additional information.

(d) Within 60 days after the close of the public comment period, the department shall issue a final decision and provide written notice of its decision to the petitioner and to each person who submitted written comments. The final decision must set forth the department's reasons for granting or denying the petition and must include a response to all substantive comments received by the department during the public comment period or during any hearing.

AUTH: 75-5-301, 75-5-303, MCA  
IMP: 75-5-303, 75-5-317, MCA